IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.147 OF 2005

Shri Premshekhar alias Milind Naik & Anr. .... Petitioners
Vs.
Smt. Julia Nazare, since deceased, through
Lrs Mrs. Pramila De Menezes & Ors. .... Respondents

Shri G. Shirodkar for the Petitioners.
Shri J.P. Mulgaonkar for the Respondents.

CORAM: R.M.S.KHANDEPARKAR, J.

DATED: FEBRUARY 16, 2006

P.C:

1. Heard. The petitioners challenge the order dated 13th January, 2005 passed by the Civil Judge, Senior Division, Mapusa, dismissing their application for mandatory temporary injunction in the form of direction for reconnection of water supply and electricity to the premises in occupation of the petitioners. It is the case of the petitioners that the water supply and electricity supply to the premises in question have been illegally disconnected by the respondents with the sole intention to compel the petitioners to vacate the premises.

2. The learned Advocate appearing for the petitioners, drawing attention to the pleadings in para 2 of the plaint as well as to the copy of the agreement under which the petitioners were inducted in the suit premises and placing reliance in the decision of the Apex Court in the matter of **Capt. B.V. D'Souza v. Antonio Fausto Fernandes,** reported in AIR 1989 SC 1816 and the decision of the Jharkhand High Court in **Sailendra Narayan Acharya v. Ramesh Kumar Singh,** reported in AIR 2001 Jharkhand 5, submitted that the petitioners had clearly claimed to be the licensee in respect of the suit premises and even though the document under which the petitioners were inducted in the suit premises is called the agreement of leave and licence, the terms and conditions thereof clearly disclose the relationship between the petitioners and the respondents to be that of lessee and lessor and being so, considering the provisions of law comprised under Section 35 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, hereinafter called as "the Goa Rent Act" as well as light and water being the necessity of life, the trial Court could not have rejected the application filed by the petitioners.

3. Undisputedly, the application which has been dismissed was filed in the suit filed by the petitioners for injunction simpliciter.

The suit has been filed against the respondents and their agents to restrain them from dispossessing the petitioners from the suit premises. The pleadings in the plaint categorically admits the agreement between the parties in relation to the suit premises being that of leave and licence, and licence for a period of 11 months, commencing from January, 2004. It also discloses that the respondents had terminated the agreement by a letter issued and served upon the petitioners on 11th August, 2004. Though it was sought to be contended that the petitioners had claimed to be in occupation of the premises on rental basis and in that regard attention was drawn to para 2 of the plaint, the said para nowhere discloses any such plea on behalf of the petitioners. The pleadings in para 2 are only to the effect that the respondent (defendant No.1) had also been residing in the suit house but she has now shifted her residence to Panaji, Goa, giving separate parts of the suit house to different persons on rental basis including the petitioners (plaintiffs). The said statement by itself would not amount to a plea of tenancy. It is well-settled that in case of plea of tenancy, all the necessary ingredients of such plea have to be specifically pleaded. The pleadings clearly disclosed from para 3 of the plaint are to the effect that the petitioners have been inducted in the suit premises under the agreement for leave and licence and licence for a period of 11

months, and further in para 4 it is disclosed that the said agreement was terminated by service of notice dated 11th August, 2004. Obviously, prima facie, after service of the notice, the petitioners had no right to occupy the suit premises. In the circumstances, question of granting of relief in the nature asked for cannot arise.

4. The decision of the Apex Court in **Capt. B.V. D'Souza's** case (supra) is of no help to the petitioners. Therein the suit was filed for the eviction of Mr. D'Souza alleging that he was in occupation of the building as a licensee and had illegally refused to vacate the same inspite of service of notice and thereafter Mr. D'Souza had raised specific defence that he was a tenant, protected under the Goa Rent Act. In that connection, while dealing with the document based on which the plea of tenancy was sought to be raised, the Apex Court had held that the agreement between the parties was not that of leave and licence but was of the nature of a lease. In the case in hand, I do not find any specific plea of tenancy having been raised by the petitioners, as already observed above.

5. In **Sailendra Narayan Acharya's** case (supra), there was no dispute that the premises were tenanted premises and being

so all the observations made therein are on the undisputed fact that the relationship between the parties was that of a lessor and lessee. This is apparent from para 3 as well as para 7 of the Judgment. In para 7, it has been categorically observed by the learned single Judge of the Jharkhand High Court that the suit which was pending between the parties was in respect of a tenanted premises. Being so, the said decision is also of no help to the petitioners.

6. Since the impugned Order does not disclose any error in relation to the exercise of jurisdiction by the Court below nor the petitioners have been able to make out infringement of any right as such on account of actions complained of on the part of the respondents, there is no case made out for interference in the impugned Order. Hence the petition is rejected.